



0000150260

RECEIVED

2014 FEB 10 A 8:59

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

Glynn Ross
405 S. Ponderosa
Payson, Az. 85541
702-603-1072
In Propria Persona

IN THE MATTER OF THE APPLICATION
OF PAYSON WATER COMPANY INC. AN
ARIZONA COPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY PLANTS
AND PROPERTY AND FOR INCREASES IN ITS
WATER RATES AND CHARGES FOR UTILITY
SERVICE BASED THEREON.

IN THE MATTER OF THE APPLICATION OF
PAYSON WATER COMPANY INC., AN ARIZONA
CORPORATION, FOR AUTHORITY TO: (1) ISSUE
EVIDENCE OF INDEBTEDNESS IN AN AMOUNT
NOT TO EXCEED \$1,238,000 IN CONNECTION
WITH INFRASTRUCTURE IMPROVEMENTS TO
THE UTILITY SYSTEM; AND (2) ENCUMBER REAL
PROPERTY AND PLANT AS SECURITY FOR SUCH
INDEBTEDNESS.

DOCKET NO. W-03514A-13-0111

Arizona Corporation Commission

DOCKETED

FEB 10 2014

DOCKETED BY

DOCKET NO. W-03514A-13-0142

**OBJECTION TO EXCLUSION
OF INTERVENOR GLYNN
ROSS FROM HEARINGS
HELD ON 2/7/14 AND 2/10/14**

Pursuant to AAC R14-3-105 et seq.

COMES NOW, Glynn Ross, Customer of the PAYSON WATER CO. INC. (PWC) in the
Gisela System (PWS 04-030) to make his objection to the ALJ Nodes exclusion of him from
participating any further in the Hearings held on February 7th and 10th, 2014 and to Motion the
Administrative Law Judge to allow myself to continue to participate, present evidence and cross
examine witnesses in these Administrative proceedings for the following reasons:

1. On October 20, 2013 Glynn Ross filed his Application and Motion to Intervene in these
Administrative proceeding so cited and Captioned herein and above.
2. On or about November 1, 2013 Assistant Chief Administrative Law Judge, Dwight D. Nodes
ordered that Glynn Ross was hereby granted Intervention.
3. **R14-3-105 C specifically states that:**

C. "Other appearances. Notwithstanding the provisions of subsections R14-3-105(A) and
R14-3-105(B), any consumer or prospective consumer may appear at any proceeding and

1 make a statement on his own behalf, at a time designated by the Commission or presiding
2 officer. A person so appearing shall not be deemed a party to the proceedings. When two or
3 more interested persons under this rule have substantially like interests and positions, the
4 presiding officer may declare them a class of interested persons for purposes of the hearing.
5 The members of the class shall designate to be spokesman for the class one of their number, or
6 his attorney, or such greater of their number, or attorneys, as the presiding officer shall
7 determine. More than one class may be established for a hearing.”
8

9 4. Mr. Ross at all previous hearings and proceedings has been allowed to participate, make
10 comment, and ask questions and examine witnesses.

11 5. At hearing on February 5th, 2013 ALJ Nodes arbitrarily and without any justifiable explanation
12 excluded Mr. Ross from any further participation and disallowed any further for him to
13 comment, testify, or submit evidence.

14 Intervener Ross has previously established himself as Consumer, Resident and property owner in
15 the Giesela system serviced by the Water Utility and is in fact a “party in interest” in these
16 Administrative proceedings.

17 “Economic injury is not the only injury that the law should recognize.”¹ “The Office of
18 Communication emphatically affirms the Consumer as a “part in interest” with a right to intervene in
19 agency cases affecting the product consumed.”² The Consumers’ right is not limited to cases in
20 which they have a “pocketbook” interest; it extends to those in which the agency action bears upon
21 quality, as well as price. Only Consumers may be directly concerned with deteriorations in quality.
22 The implication is far-reaching. Administrative decisions that affect environmental quality should
23 give “consumers” of the environment the same right to be heard before those decisions are made.³

24 The evolving law makes it no longer accurate to assert in agencies a discretionary power to
25 exclude participation in their proceedings. The right to be heard may not be limited to the “obvious
26 party.” The competitor and the consumer must now be considered “parties in interest” in cases that
27 affect their competitive or consumer interest. They have a right to participate that may not be
28 limited to the writing of letters or to second-class appearance as a matter of grace at hearings. The

¹ Office of Communication v. FCC, 359 F.2d 994, 1003 (D. C. Cir. 1966).

² Compare National Welfare Rights Org. v. Finch, 429 F.2d 725 (D. C. 1970) (right of welfare clients and organizations to intervene in hearing to determine whether states were complying with requirements of federal law).

³ Palisades Citizens Assn. v. CAB, 420 F.2d 188 (D. C. Cir. 1969).

1 agency still possesses discretion to establish rules governing participation. Thus, it may lay down
2 rules for determining which consumers of community representative are to be allowed to
3 participate;⁴ it may require consolidation of petitions and briefs to avoid multiplicity of parties and
4 duplication of effort; and it may control the proceedings so that all participants are required to adhere
5 to the issues and refrain from introducing cumulative or irrelevant evidence.⁵

6 But it may no longer completely exclude persons who have a substantial interest in the
7 proceeding. "Any interested person" now has the right to intervene in an agency proceeding "so far
8 as the orderly conduct of public business permits." ⁶ The controlling principle was stated by a
9 federal court of appeals: "Efficient and expeditious hearing should be achieved, not by excluding
10 parties who have a right to participate, but by controlling the proceedings so that all parties are
11 required to adhere to the issues and to refrain from introducing cumulative or irrelevant evidence."⁷

12 The right to participate in agency proceedings is expanded by the Ashbacker doctrine. The Court
13 held that the commission had acted improperly:"For if the grant of one (application) effectively
14 precludes the other, the statutory right to a hearing which Congress has accorded applicants before
15 denial of their applications becomes an empty thing." ⁸ Ashbacker should not be limited to physical
16 mutual exclusiveness. Where an agency makes choices, those from whom the choices are made
17 have an interest that should be protected. ⁹

18 WHEREFORE Mr. Ross requests that he be allowed to continue his participation in these
19 Administrative proceedings, and to comment, examine witnesses and introduce evidence without any
20 further interruption or exclusion.

⁴ Office of Communication v. FCC, 359 F.2d at 1006. See, e.g., Palisades Citizens Assn. v. CAB, 420 F.2d at 193.

⁵ National Welfare Rights Org. v. Finch, 429 F.2d at 738.

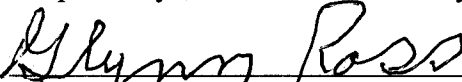
⁶ American Communications Assn. v. United States, 298 F.2d 648, 650 (2d Cir. 1962)(quoting Federal Administrative Procedure Act §6(a), 5 U.S.C. §555(b)).

⁷ Virginia Petroleum Jobbers Assn. v. FPC, 265 F.2d 364, 368 (D. C. Cir. 1959). See Recommendation 71-6 of the Administrative Conference, 1 C.F.R. §305.71-6 (1981), intended to encourage greater participation by intervenors in agency proceedings.

⁸ Ashbacker Radio Corp. v. FCC, 326 U. S. 327 (1946).

⁹ For a case so holding, Pollack v. Simonson, 350 F.2d 740 (D. C. Cir. 1965). Compare Baptist Hosp. v. State, 500 So. 2d 620 (Fla. App. 1986); Huron Valley Hosp. v. State Health Commn., 312 N.W.2d 422 (Mich. App. 1981); Appeal of Behavior Science Inst., 436 A.2d 1328 (N. H. 1981).

1 Respectfully submitted this 10th day of February 2014

2 
3
4 Glynn Ross, in Propria Persona

5 **CERTIFICATE OF SERVICE**

6
7 The Original and 13 Copies of the foregoing has been mailed this 10th day February 2014 to the following:

8
9 **DOCKET CONTROL**

10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington St.
12 Phoenix, Arizona 85007

13
14 A Copy of the Original of the foregoing has been mailed this 10th day February 2014 to the following:

15
16 Jason Williamson, President PWC
17 7581 E. Academy Blvd., Suite 229
18 Denver, CO 80203

19
20 Thomas J. Bourassa, Consultant PWC
21 139 W. Wood Dr.
22 Phoenix, Az. 85029

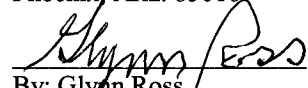
23
24 Kathleen M. Reidhead, Intervener
25 14406 S. Cholla Canyon Dr.
26 Phoenix, Az. 85044

27
28 William Sheppard, Intervener
29 6250 N. Central Ave.
30 Phoenix, Az. 85012

31
32 Suzanne Nee, Intervener
33 2051 E. Aspen Dr.
34 Tempe, Az. 85282

35
36 J. Stephen Gehring & Richard M. Burt, Interveners
37 405 S. Ponderosa
38 Payson, Az. 85541

39
40 Fennemore & Craig, P.C.
41 Jay L. Shapiro (No. 14650)
42 Attorneys for Payson Water Co. Inc.
43 2394 E. Camelback Rd., Suite 600
44 Phoenix, Ariz. 85016

45 
46
47 By: Glynn Ross